

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF NEW MEXICO**

LAWRENCE RODRIGUEZ, ROSE MARIE NEAL,  
JASON BROWN, and GREG MIERA,  
on behalf of themselves and other present  
and former City employees,

Plaintiffs,

v.

No. CIV 07-0901 JB/ACT

CITY OF ALBUQUERQUE,

Defendant.

**MEMORANDUM OPINION AND ORDER**

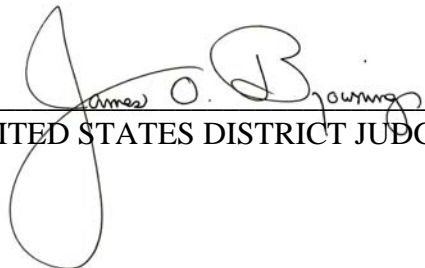
**THIS MATTER** comes before the Court on the Motion for Leave of Court to File Dispositive Motion on the Basis of Stare Decisis, filed April 6, 2009 (Doc. 55). The Court held a hearing on June 9, 2009. The primary issue is whether the Court should allow Defendant City of Albuquerque leave to file, out of time, a motion for summary judgment on the basis of stare decisis. For the reasons stated at the hearing and other reasons consistent with those already stated, the Court will deny the motion insofar as it asks that the Court follow the decision in Chavez v. City of Albuquerque, No. 02-0562 JH/ACT (D.N.M.), on the basis of stare decisis, but will allow the City and the Plaintiffs to file motions for summary judgment.

District court decisions, including other decisions from the District of New Mexico, have persuasive value but do not bind the Court. See United States v. Worthon, 520 F.3d 1173, 1179-80 (10th Cir. 2008) (“[D]istrict court opinions have persuasive value only and are not binding as a matter of law.”). While the Court might ultimately reach the same conclusion that the Honorable Judith Herrera, United States District Judge, did in Chavez v. City of Albuquerque, the Court must

engage in its own analysis of the merits of this case. Thus, as stated at the hearing, the Court will not allow the City of Albuquerque to file a motion for summary judgment that asks the Court to give binding effect in this case to Judge Herrera's decision in Chavez v. City of Albuquerque.

On the other hand, the Court will allow the City to file a motion for summary judgment, which can of course include a request that the Court follow Judge Herrera's opinion because of its persuasive value, in accordance with the procedures to which the parties agreed at the hearing. The parties will have thirty days from the date of the hearing to confer and, if possible, come up with a mutually agreeable statement of undisputed facts. If the parties can agree on the facts, then within fifteen days of the initial thirty-day deadline, they may file cross motions for summary judgment, and the Court will resolve the case on the briefing. If the parties cannot agree on the facts, then a bench trial will be necessary, but the parties have agreed to continue to work on agreeing on as much of the record as possible to minimize the number of factual issues that need to be resolved.

**IT IS ORDERED** that the Motion for Leave of Court to File Dispositive Motion on the Basis of Stare Decisis is granted in part and denied in part.

  
UNITED STATES DISTRICT JUDGE

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-- and --

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